No. 93-5770

In The

Supreme Court of the United States

October Term, 1993

ROBERT EDWARD STANSBURY,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

On Writ Of Certiorari To The
Supreme Court Of California

BRIEF OF AMICUS CURIAE, ORANGE COUNTY DISTRICT ATTORNEY, STATE OF CALIFORNIA, IN SUPPORT OF THE JUDGMENT BELOW, BUT IN OPPOSITION TO THE RATIO DECIDENDI OF THE CALIFORNIA SUPREME COURT ON THE QUESTION PRESENTED

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QUESTION PRESENTED

May a trial court determine that a person is not in custody for Miranda purposes based on the officer's subjective opinion that the person was not a suspect?

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INTEREST OF AMICUS CURIAE

As public prosecutor in one of California's most populous counties, amicus has direct, daily experience with *Miranda* "custody" issues, both in police consultation and training and in trial court litigation. To the extent that decisions of the California Supreme Court on such issues may not properly reflect the teachings of this Court's decisions, confusion and inconsistency result for suspect, officer, litigator and jurist alike. Amicus has an interest in helping the state to identify deviations from controlling precedent of this Court, in order to clarify for all those affected the nature of the concept of *Miranda* "custody," so that rights may be protected without inappropriate restriction on lawful interrogation.

SUMMARY OF ARGUMENT

Although this Court has repeatedly explained that *Miranda* "custody" is essentially formal arrest or equivalent restraint, and that this degree of coercive restraint is to be evaluated objectively, from the viewpoint of a reasonable person in the suspect's position, the California jurisprudence on this issue has frequently had resort to a list of "factors" (including the interrogating officer's subjective focus of suspicion) that cannot be reconciled with the *Miranda* rationale, or with this Court's "custody" decisions. In reaching its conclusion that petitioner was not in custody during the interrogation at issue in this case, the California Supreme Court relied on an improper analysis, and its decision perpetuates an unworkable definition, of *Miranda* "custody."

Petitioner was not in custody on the facts found – not because of the absence of subjective suspicions on the part of the officer, but because of the absence of any objective indications that petitioner's liberty was officially curtailed to the degree associated with a formal arrest.

ARGUMENT

California cannot escape the ghost of *Escobedo*. Although the Sixth Amendment holding of *Escobedo v. Illinois*, 378 U.S. 478 (1964), was limited to its own facts in *Johnson v. New Jersey*, 384 U.S. 719, 733-734 (1966), and was seriously questioned "in retrospect," in *Kirby v. Illinois*, 406 U.S. 682, 689 (1972), and *United States v. Gouveia*, 467 U.S. 180, n.5 (1984), and was disassociated from any connection with *Miranda v. Arizona*, 384 U.S. 436 (1966) in *Moran v. Burbine*, 475 U.S. 412, 430 (1986), California courts have not broken the spell. *Escobedo*'s list of significant "factors" in applying its holding – including focus of suspicion, accusatory questioning and stationhouse situs – was adopted by California in *People v. Dorado*, 62 Cal.2d 338 (1965), purporting, like *Escobedo*, to find a violation of the right to counsel, even though such a right had not yet attached. Although the *Miranda* court did not transplant *Escobedo*'s Sixth Amendment factors when establishing police procedures to effectuate the Fifth Amendment privilege against compelled self-incrimination (*Miranda, supra*, 384 U.S. 436, n.4), California courts did so, without analysis or discussion.

Thus, the decision of the California Supreme Court in the instant matter had reference to "(1) the site of the interrogation, (2) whether the investigation has focused on the subject, (3) whether the objective indicia of arrest are present, and (4) the length and form of questioning." *People v. Stansbury*, 4 Cal.4th 1017, 1050 (1993). Cited as authority for this four-factor test of custody was that court's decision in *People v. Boyer*, 48 Cal.3d 247, 272 (1989). But *Boyer* relied on *People v. Herdan*, 42 Cal.App.3d 300, 307 (1974), which relied on *People v. White*, 69 Cal.2d 751, 761 (1968), which relied on *People v. Kelley*, 66 Cal.2d 232, 245 (1967), which, citing *People v. Dorado, supra*, 62 Cal.2d at 353, declared: "It must be held that the confession was not admissible because secured in violation of the rules announced in *Escobedo*."

Escobedo's holding, of course, has nothing to do with *Miranda*'s rationale – that apparent police custodial interrogation is presumptively compelling, and that warnings serve to neutralize the presumed compulsion. And of the four factors derived by the California Supreme Court from *Escobedo*, only one – presence of the objective indicia of arrest – approximates this Court's definition of "custody" as "the functional equivalent of formal arrest," *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984), or as "formal arrest, or restraint on freedom of movement of the degree associated with a formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (incidentally rejecting, in footnote 1, the state's four-factor definition in *People v. Herdan, supra*, 42 Cal.App.3d 300, which was nevertheless revived in *Boyer* and *Stansbury*).

The three remaining factors simply are not indicative of the degree of coercive restraint apparently present.

This Court has repeatedly held that voluntary appearance at the police station for questioning is not to be equated with custody, where no indications of restraint are present. *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977); *California v. Beheler, supra*, 463 U.S. 1121, 1125. The Court has likewise rejected the argument that an official's subjective focus of suspicion creates custody. *Beckwith v. United States*, 425 U.S. 341, 345 (1976); *Minnesota v. Murphy*, 465 U.S. 420, 431 (1984). And the length and form of questioning are more relevant to the issue of whether interrogation has occurred, than to a determination of whether or not arrest-like restraint is evident. *Rhode Island v. Innis*, 446 U.S. 291, 300 (1980).

For all that appears from the record, the circumstances of the interrogation in this case are "remarkably similar," *California v. Beheler, supra*, 463 U.S. 1121, 1123, to those ruled noncustodial in *Beheler* and *Mathiason*. The California Supreme Court need have gone no further in support of its holding than drawing this parallel. That the court nevertheless ventured back into the four-factor fog reveals the continuing confusion about *Miranda* custody in this state; indeed, the extent to which Miranda custody remains misunderstood nearly three decades after its first discussion is evident from the fact that the police officer interrogating petitioner stopped questioning him soon after becoming suspicious and gave him *Miranda* warnings, despite the lack of any objective change in his liberty status, and from the fact that the trial judge suppressed all statements made after the "focus of suspicion" (again, regardless of the absence of restraint), and from the fact that the California Supreme Court relied on this same faulty analysis in support of its holding.

The California Supreme Court further misstated the definition of "custody" as occurring whenever a suspect is physically deprived of his freedom of action "in any way." *People v. Stansbury, supra*, 4 Cal.4th 1017, 1050. Such a definition would mean that *Miranda* would be triggered by interrogation at any *detention*, contrary to the holdings in *Berkemer v. McCarty*, 468 U.S. 420, 436-440 (1984), and *Pennsylvania v. Bruder*, 488 U.S. 9, 10-11 (1988).

That the California Supreme Court was incorrect in basing its custody ruling on the police officer's evolving degree of suspicion follows from this Court's instruction that custody issues be determined on the basis of an objective, reasonable-person test, rather than "on the self-serving declarations of the police or the defendant." *Berkemer v. McCarty, supra*, 468 U.S. 420, 442, n.35. Since a reasonable person would not be privy to a police officer's unarticulated thoughts, the officer's subjective state of mind could hardly be relevant to the assessment of the degree of coercive restraint to which a reasonable person in the suspect's position would have felt himself subject. *Berkemer v. McCarty, supra*, 468 U.S. 420, 435, n.22.

The trial court found that petitioner voluntarily agreed to be interviewed, voluntarily accompanied police to the station, voluntarily answered questions, and was subjected to no restraints. On these facts, he could not reasonably have believed himself to be under formal arrest or its functional equivalent, and so *Miranda* was not implicated. The California Supreme Court's judgment is supported, on these facts, by the rulings in *Oregon v. Mathiason, supra*, 429 U.S. 492, and *California v. Beheler, supra*, 463 U.S. 1121. The California Supreme Court's unnecessary and improper discussion of other "factors" –

particularly subjective levels of suspicion unknowable to petitioner and so unable to exert compulsion on him to confess – should be clearly repudiated (again) for the benefit of police, attorneys and courts still haunted by *Escobedo*.

CONCLUSION

It is respectfully submitted that the judgment of the California Supreme Court should be affirmed on the basis of this Court's controlling precedents, and that the language of the California Supreme Court's opinions in the line of custody cases traceable from this opinion to *Escobedo v. Illinois* should be unmistakably disapproved insofar as they depart from this Court's pronouncement that custody is the functional equivalent of formal arrest, objectively measured.

DATED: December 13, 1993

Respectfully submitted,

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